

oral argument on the issue, on October 24, 2007, the Court set the parameters for required preparation of 30(b)(6) designees. *See* DKT #1336.

2. Some 4½ months ago -- on December 21, 2007 -- the State renoticed the 30(b)(6) depositions of the Cargill Defendants for January 30 and 31, 2008. *See* Exs. 1 & 2 to DKT #1469. In an effort to accommodate a request from the Cargill Defendants, the State proposed narrowing the 30(b)(6) notices so that those topics most pertinent to issues pertaining to the State's Preliminary Injunction Motion would be covered at depositions on January 30, 2008, and the remaining topics would be covered at depositions following the preliminary injunction hearing. *See* Exs. 3, 5 & 6 to DKT #1469. Rather than respond to this good faith effort by the State to accommodate the Cargill Defendants, the Cargill Defendants sought to postpone these depositions until after the preliminary injunction hearing. *See* DKT #1453, #1474, #1484 & #1493; *see also* Exs. 7 & 9 to DKT #1469. By its February 1, 2008 Order, the Court postponed the 30(b)(6) depositions of the Cargill Defendants until after the preliminary injunction hearing. *See* DKT #1502.

3. On March 24, 2008, the State again renoticed the 30(b)(6) depositions of the Cargill Defendants. *See* Ex. 2 to DKT #1683. The depositions were scheduled for April 22, 23, 29 & 30 -- more than a month out from the date of service of the notices. *See* Ex. 2 to DKT #1683. Despite this month-long lead time, the Cargill Defendants refused to produce one of its designees on the requested dates, citing scheduling issues. *See* Ex. 1 (April 3, 2008 Letter). Specifically, the designee whom the Cargill Defendants refused to produce on the dates noticed was the designee addressing corporate organization / structure issues whom the State needed to

depose first.¹ By letter dated April 18, 2008, the Cargill Defendants reiterated this refusal to produce the designee addressing corporate organization / structure issues in the order requested by the State and on the dates noticed by the State. *See* Ex. 3 to DKT #1683. Accordingly, by e-mail dated April 18, 2008, the State confirmed the fact that the Cargill Defendants were refusing to produce the noticed 30(b)(6) designee on April 22 & 23, 2008. *See* Ex. 3 (April 18, 2008 E-mail). This same day, the Cargill Defendants also filed their Motion.²

¹ Indeed, the earliest the Cargill Defendants were willing to produce this designee was on May 22 or 23 -- a full month after the date set forth in the deposition notice. *See* Ex. 2 (April 7, 2008 letter). Apparently recognizing the weakness of their position, the Cargill Defendants in their moving papers state that the designee can be produced earlier than the previously offered date of May 23.

² As in the "Cargill Defendants' Separate Response to Plaintiffs' [sic] Motion to Expand the Discovery Period" [DKT #1645], the Cargill Defendants' Motion also makes reference to the approximately 200 boxes believed to contain documents relevant to corporate knowledge and / or the categories discussed during the parties' July 19, 2007 meet and confer that the Cargill Defendants have failed to properly produce to the State. Significantly, included within these approximately 200 boxes are documents that the Court has already ordered the Cargill Defendants to produce, *see* July 6, 2007 Order, and documents that the Cargill Defendants have stated they have already agreed to produce. Yet, despite having known of these responsive documents for many months (and perhaps as early as August 2007), it was only on the date of the filing of their Motion (April 18) that the Cargill Defendants offered to allow the State the opportunity to review these documents. *See* Ex. 3 to DKT #1683. Moreover, the Cargill Defendants still have not produced an index complying with this Court's requirements pertaining to the production of documents (known as the "Cargill Rule"). *See* DKT #1150 & #1207. Finally, it should be noted that the Cargill Defendants still have not explicitly corrected their representation to the Court of a year ago concerning the status of their document production. *See* April 27, 2007 Hearing Transcript, 94:2-4 ("I will make a representation to the Court that we have completed our hard copy production, Cargill has").

This delay in the production of these responsive documents has prejudiced the State. Indeed, it serves to underscore the dilatory discovery tactics of the Cargill Defendants: first, they say their production is complete when it is not; next they collect additional responsive documents but keep this fact from the State for (at least) three months, and then they offer to allow the State to review the documents but fail to comply with this Court's dictates as to document productions. Obviously, the State is entitled to, and reserves all rights to, redepose the Cargill Defendants' 30(b)(6) designees on the contents of these improperly withheld documents once proper production of them occurs and the State has had the opportunity to review them.

In any event, and additionally, the Cargill Defendants quite correctly acknowledge in their Motion that the State should be allowed to supplement its expert reports as to the Cargill

Argument

This Court has previously ruled that the party seeking discovery is the master of the scheduling and may set both the order in which depositions are to be taken and the dates on which depositions may be taken. *See, e.g.*, DKT #1425 (requiring State to produce its preliminary injunction expert witnesses in the order and on the dates proposed by Defendants). The State, quite logically, is seeking to take the deposition of the designee knowledgeable about the Cargill Defendants' corporate organization / structure issues prior to taking the deposition of the designee knowledgeable about core liability issues since corporate organization / structure issues are a foundational predicate to the core liability issues. Furthermore, in a scheduling accommodation to the Cargill Defendants, the State gave the Cargill Defendants a month-long lead time in the deposition notices. *Compare* LCvR 30.1(a)(2) ("reasonable notice to parties as contemplated by Fed. R. Civ. P. 30(b)(1) for the taking of depositions shall be five (5) days"). Yet the Cargill Defendants nevertheless have refused to tender the 30(b)(6) designee on corporate organization / structure issues on the dates requested, thereby delaying not only the deposition of this designee, but also the deposition of the core liability issues. This delay is severely prejudicial to the State in its trial preparations.³

While it does not disagree that when possible a party noticing a deposition should make reasonable efforts to accommodate the opposing party's schedule, the State has been extraordinarily patient in trying to secure the 30(b)(6) deposition testimony of the Cargill

Defendants due to the untimely production of these documents (or any other reason that should become apparent). *See* Motion, p. 2. One "other reason" justifying supplementation of its expert reports as to the Cargill Defendants that is already readily apparent is the Cargill Defendants' continued delay in the tendering of their 30(b)(6) designees.

³ As noted in footnote 2 above, the Cargill Defendants have freely admitted that delays in their discovery compliance warrant allowing the State to supplement its expert reports as to the Cargill Defendants. *See* Motion, p. 2. The State reserves all rights to do so.

Defendants these past 9½ months. However, at some point accommodation must yield to the necessities of case preparation and the demands that the scheduling order puts on that case preparation. Simply put, the fact that one may have competing business commitments or obligations does not rise to the level of "good cause" necessary to establish an entitlement to a protective order or a motion to quash -- particularly when there has already been a 9½-month delay in securing these depositions and in light of the important environmental and public health issues raised by this case. Accordingly, the Cargill Defendants' Motion should be denied, and the Cargill Defendants' 30(b)(6) designees should be tendered for deposition at a time and place of the State's choosing.⁴

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
 ATTORNEY GENERAL
 Kelly H. Burch OBA #17067
 J. Trevor Hammons OBA #20234
 Tina Lynn Izadi OBA #17978
 Daniel P. Lennington OBA #21577
 ASSISTANT ATTORNEYS GENERAL
 State of Oklahoma
 313 N.E. 21st St.
 Oklahoma City, OK 73105
 (405) 521-3921

⁴ Consistent with these principles, the State is entitled to take separate depositions of the Cargill Turkey Production and Cargill, Inc. designees. Consolidating the depositions of the Cargill Turkey Production and Cargill, Inc. designees into single depositions would create a thoroughly confused record unless Cargill Turkey Production and Cargill, Inc. agree that they are one-and-the-same.

s/Robert A. Nance

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina Lynn Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel P. Lennington, Assistant Attorney General	daniel.lennington@oag.ok.gov
M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Douglas A. Wilson	doug_wilson@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	
Louis Werner Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
BULLOCK, BULLOCK & BLAKEMORE	
Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com

Michael G. Rousseau
Fidelma L. Fitzpatrick
MOTLEY RICE, LLC
Counsel for State of Oklahoma

mrousseau@motleyrice.com
ffitzpatrick@motleyrice.com

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E Sanders
Edwin Stephen Williams
YOUNG WILLIAMS P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.

John H. Tucker
Theresa Noble Hill
Colin Hampton Tucker
Leslie Jane Southerland
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

jtucker@rhodesokla.com
thill@rhodesokla.com
ctucker@rhodesokla.com
ljsoutherland@rhodesokla.com

Terry Wayen West
THE WEST LAW FIRM

terry@thewestlawfirm.com

Delmar R. Ehrich
Bruce Jones
Dara D. Mann
Krisann C. Kleibacker Lee
Todd P. Walker
FAEGRE & BENSON, LLP

dehrich@faegre.com
bjones@faegre.com
dmann@faegre.com
kklee@faegre.com
twalker@faegre.com

Counsel for Cargill, Inc. & Cargill Turkey Production, LLC

James Martin Graves
Gary V Weeks
Paul E. Thompson, Jr
Woody Bassett
Jennifer E. Lloyd
BASSETT LAW FIRM

jgraves@bassettlawfirm.com
gweeks@bassettlawfirm.com
pthompson@bassettlawfirm.com
wbassett@bassettlawfirm.com
jlloyd@bassettlawfirm.com

George W. Owens
Randall E. Rose
OWENS LAW FIRM, P.C.

gwo@owenslawfirm.com
rer@owenslawfirm.com

Counsel for George's Inc. & George's Farms, Inc.

A. Scott McDaniel
Nicole Longwell
Philip Hixon
Craig A. Merkes
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC

smcdaniel@mhla-law.com
nlongwell@mhla-law.com
phixon@mhla-law.com
cmerkes@mhla-law.com

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC
Counsel for Peterson Farms, Inc.

sbartley@mwsgw.com

John Elrod
Vicki Bronson
P. Joshua Wisley
Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, LLP
Counsel for Simmons Foods, Inc.

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com
bfreeman@cwlaw.com
rfunk@cwlaw.com

Stephen L. Jantzen
Paula M. Buchwald
Patrick M. Ryan
RYAN, WHALEY, COLDIRON & SHANDY, P.C.

sjantzen@ryanwhaley.com
pbuchwald@ryanwhaley.com
pryan@ryanwhaley.com

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Thomas C. Green
Gordon D. Todd
SIDLEY, AUSTIN, BROWN & WOOD LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
tcgreen@sidley.com
gtodd@sidley.com

Robert W. George
L. Bryan Burns
TYSON FOODS, INC

robert.george@tyson.com
bryan.burns@tyson.com

Michael R. Bond
Erin W. Thompson
KUTAK ROCK, LLP
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

michael.bond@kutakrock.com
erin.thompson@kutakrock.com

R. Thomas Lay
KERR, IRVINE, RHODES & ABLES

rtl@kiralaw.com

Jennifer Stockton Griffin
David Gregory Brown
LATHROP & GAGE LC
Counsel for Willow Brook Foods, Inc.

jgriffin@lathropgage.com

Robin S Conrad
NATIONAL CHAMBER LITIGATION CENTER

rconrad@uschamber.com

Gary S Chilton
HOLLADAY, CHILTON AND DEGIUSTI, PLLC
Counsel for US Chamber of Commerce and American Tort Reform Association

gchilton@hcdattorneys.com

D. Kenyon Williams, Jr.
Michael D. Graves
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

kwilliams@hallestill.com
mgraves@hallestill.com

Richard Ford
LeAnne Burnett
CROWE & DUNLEVY
Counsel for Oklahoma Farm Bureau, Inc.

richard.ford@crowedunlevy.com
leanne.burnett@crowedunlevy.com

Kendra Akin Jones, Assistant Attorney General
Charles L. Moulton, Sr Assistant Attorney General
Counsel for State of Arkansas and Arkansas National Resources Commission

Kendra.Jones@arkansasag.gov
Charles.Moulton@arkansasag.gov

Mark Richard Mullins
MCAFEE & TAFT
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen

richard.mullins@mcafeetaft.com

Mia Vahlberg
GABLE GOTWALS

mvahlberg@gablelaw.com

James T. Banks
Adam J. Siegel
HOGAN & HARTSON, LLP
Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation

jtbanks@hhlaw.com
ajsiegel@hhlaw.com

John D. Russell
FELLERS, SNIDER, BLANKENSHIP, BAILEY
& TIPPENS, PC

jrussell@fellerssnider.com

William A. Waddell, Jr.
David E. Choate
FRIDAY, ELDREDGE & CLARK, LLP
Counsel for Arkansas Farm Bureau Federation

waddell@fec.net
dchoate@fec.net

Barry Greg Reynolds
Jessica E. Rainey
TITUS, HILLIS, REYNOLDS, LOVE,
DICKMAN & MCCALMON

reynolds@titushillis.com
jrainey@titushillis.com

Nikaa Baugh Jordan
William S. Cox, III
LIGHTFOOT, FRANKLIN & WHITE, LLC

njordan@lightfootlaw.com
wcox@lightfootlaw.com

Counsel for American Farm Bureau and National Cattlemen's Beef Association

Also on this 5th day of May, 2008, I mailed a copy of the above and foregoing pleading to the following:

David Gregory Brown
Lathrop & Gage, LC
314 E. High Street
Jefferson City, MO 65101

Thomas C. Green
Sidley Austin Brown & Wood, LLP
1501 K St. NW
Washington, DC 20005

Cary Silverman
Victor E. Schwartz
Shook Hardy & Bacon LLP
600 14th St. NW, Ste. 800
Washington, DC 20005-2004

C. Miles Tolbert

Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

Dustin McDaniel

Justin Allen

Office of the Attorney General (Little Rock)
323 Center Street, Suite 200
Little Rock, AR 72201-2610

Steven B. Randall

58185 County Road 658
Kansas, Ok 74347

George R. Stubblefield

HC 66, Box 19-12
Proctor, Ok 74457

s/Robert A. Nance

Robert A. Nance